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IN THE

Supreme Court of the United States

October Term, 1968

No. 240

SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, AFL-CIO, SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, ATLANTIC, GULF, LAKES AND INLAND WATERS DISTRICT, AFL-CIO, and SEAFARERS INTERNATIONAL UNION OF NORTH AMERICA, GREAT LAKES DISTRICT, AFL-CIO,

Petitioners,

against

W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor.

REPLY MEMORANDUM FOR PETITIONERS IN SUPPORT

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and

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of Counsel

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W. WILLARD WIRTZ, Secretary of Labor, United States Department of Labor.

REPLY MEMORANDUM FOR PETITIONERS IN SUPPORT

1. The Solicitor General agrees, albeit obliquely, that the issue raised by this petition is appropriate for consideration by this Court.

2. The Solicitor General suggests, however, that the issue should not be considered in this case because ". . . petitioners failed to establish a factual predicate for their constitutional claim . . . ." (Solicitor's Memorandum in Opposition, page 3).

3. The Solicitor General avers that the Kleiler affidavit demonstrates that the Secretary of Labor was acting within his authority in conducting the complained of audit.

4. Petitioners do not question generally the right of the Secretary to conduct audits under his statutory grant of power [Section 601(a) of the Act, 29 U.S.C. Section 521(a)].

5. Petitioners, however, do question the right of the Secretary to conduct an audit under the LMRDA at the behest and instigation of the Department of Justice to gather evidence for the latter's use in a federal grand jury investigation and subsequent criminal prosecution in Chicago, wholly unrelated to the purposes or scope of the LMRDA.

6. On this issue the Kleiler affidavit is silent.[1] It neither affirms nor denies the petitioners' charge for "fronting."

7. The Solicitor General's attempt to raise a factual issue at this stage of the proceedings is disingenuous at best.

At all stages in this proceeding the Secretary has been the only one who has had personal knowledge of the facts. Yet, it is he who has consistently failed (or refused) to deny that he was auditing for the benefit of and at the behest of the Department of Justice. See, e.g., *Brady* v. *Maryland*, 373 U.S. 83 (1963).

8. The record shows that petitioners have presented a proper case for this Court's consideration of the issue,

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[1] It is upon the Kleiler affidavit that the Solicitor places his sole and entire reliance. (Solicitor's Memorandum in Opposition, pp. 2-3).

whether as posed by petitioners or as posed by the Solicitor General in his reply memorandum.

9. The petition accordingly should be granted.

Respectfully submitted,

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